

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

**3:12cv
[3:01cr216]**

GERALD STEELE,)	
)	
Petitioner,)	
)	
Vs.)	SIMMONS SCREENING
)	ORDER
UNITED STATES OF AMERICA,)	
)	
Respondent.)	
)	

THIS MATTER is before the court on petitioner's *pro se* motion for relief under Simmons (#363). Although filed in the criminal action, the court has considered the pending motion and determined that, to the extent petitioner seeks relief under 28, United States Code, Section 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody, an initial screening of the petition under the Rules Governing § 2255 Proceedings, Rule 4(b) 28 U.S.C. §2255 is appropriate. The court finds, as follows:

1. The petition has not been signed under penalty of perjury, Rule 2(b)(5) of the Rules Governing Section 2255 Proceedings;
2. Petitioner has arguably asserted that jurisdiction exists under § 2255(f)(3), which may require further review if this matter were to move forward;
3. In accordance with § 2255(a), the court has conducted an initial screening, which reveals that petitioner has made a 21 U.S.C. § 841(b) sentencing enhancement claim under Simmons, inasmuch as petitioner contends that he received a sentencing enhancement based on a now non-qualifying North Carolina offense, to wit, that petitioner received an enhanced minimum sentence under 21 U.S.C. § 841(b)(1)(a).

Based on such findings, the court concludes that petitioner has not asserted a colorable

claim inasmuch as under United States v. Powell, ___ F.3d ___, No. 11-6152 (4th Cir. Aug. 20, 2012), an enhanced minimum sentence under § 841(b)(1)(a) is a lawful sentence as it is within the unenhanced statutory maximum.

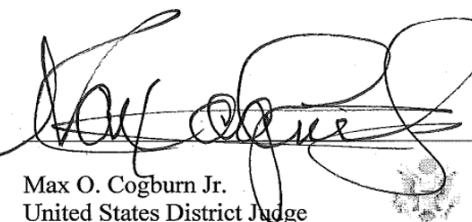
ORDER

IT IS, THEREFORE, ORDERED that

- (1) petitioner's claim of receiving an enhanced minimum sentence under 21 U.S.C. § 841(b)(1)(a) that is within the statutory maximum, such claim is summarily **DENIED**;
- (2) the *pro se* motion for relief under Simmons (#1) herein (and (#363) in 3:01cr216) is **DENIED**; and
- (3) this action is **TERMINATED**.

The Clerk of Court is instructed to send a copy of this Order to the United States Attorney, attention AUSA Ray.

Signed: November 5, 2012



Max O. Cogburn Jr.
United States District Judge